In the High Court of Uttaranchal, at Nainital.

Appeal From Order No. 486/2003

Indra Singh S/o Bheem Singh
R/o Village Khet, P.O. Khet,
Tehsil Dharchula,
District Pithoragarh ……..Appellant/Claimant.

Versus

1- Ram Singh S/o Kharak Singh
R/o Village New Samba P.O. Suwa
Tehsil Dharchula District Pithoragarh.

2- The Oriental Insurance Co. Ltd.
Through its Divisional Manager,
Divisional Office, Haldwani,
District Nainital …… Respondents/ Opp. Parties.

Sri G.B. Pandey, Advocate for the appellant.
Sri Prabhakar Joshi, Advocate for the respondent No. 1.
Sri Deepak Rawat, Advocate for the respondent No.2.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 11-05-2006

This Appeal From Order, U/S 173 of the Motor Vehicle Act has been preferred by the claimant/ appellant against the judgment and award dated 20-9-2003 passed by the Motor Accident Claim Tribunal/District Judge, Pithoragarh (in short 'Tribunal) in M.A.C.P. No. 126/2001 Indra Singh Versus Ram Singh and others.

2- Brief facts giving rise to this appeal are that the claimant Indra Singh, aged 29 years had gone from Kanchoti to Sobala on 30-7-2000 by bus No. U.P. 03/4273. Due to rash and negligent driving by the driver of the said bus, the bus met with an accident near Devi Temple at about 10-30 a.m. with the result the claimant sustained grievous injuries. The claimant was brought to Primary Health Center Dharchula where he was given the first aid and keeping in view the serious condition of the claimant, the case was referred to District Hospital, Pithoragarh, where he remained

hospitalized from 31-7-2000 to 2-8-2000. The case of the claimant was again referred to higher centre for treatment to Bareilly in view of his critical condition, where he remained admitted from 2-8-2000 to 18-8-2000. According to the claimant he suffered injuries on both the legs as well as in his vertebrae. The claimant also suffered injuries on different parts of his body. According to the claimant, an amount of Rs. 2,00,000/- has been incurred in his treatment, even then he cannot move independently and has become permanently incapacitated as there is complete loss of sensation and power in his legs with the result he has become bed ridden.

4- The offending bus in question was owned by O.P.No.1 Ram Singh and it was insured with Oriental Insurance Company, O.P.No.2. The claimant/appellant was working as a Raj Mistri and was getting about Rs. 4,200/- per month from his occupation. The claimant has, therefore, filed this petition claiming a compensation of Rs. 5,00,000/- along with an interest of 12% per annum.

5- The owner of the vehicle filed written statement, admitted the accident and asserted that the injured was travelling in the bus as a passenger. It was stated that the compensation claimed is excessive. It was also pleaded that the accident was not caused due to the fault of the driver, rather the driver was driving the vehicle carefully and cautiously. The accident occurred due to mechanical failure of the bus and the road being muddy and slippery at the spot. It was alleged that the driver of the bus also died in the accident. In the additional pleas, it was pleaded that the bus was duly insured with the Oriental Insurance Company Ltd. w.e.f. 7.1.2000 for one year and there were all necessary valid papers in respect of the vehicle, therefore, the compensation, if any, is to be paid by the insurer.

6- The Insurance Company filed its written statement and contested the case. It denied all the material allegations of the claim petition for want of knowledge. It was asserted that the compensation claimed is excessive and without any basis. The vehicle was being plied in violation of the policy conditions and

that the driver was not having a valid driving licence at the time of accident will hill endorsement thereon.

7- The learned Tribunal framed three issues in the case. Issue No.1 related to rash and negligent driving by the driver of the offending vehicle result into grievous injuries to the claimant. Issue No.2 related to insurance of the vehicle and holding of valid papers in respect of the offending vehicle. Issue No.3 related to relief.

8- The claimant/appellant filed photo copy of the first information report, admission and discharge slips from the hospitals, report of the C.T. Scan, record of treatment of Keshlata Hospital, pathological report, prescription slips, record of treatment of injured, disability certificate issued by the Medical Board as well as certain medical bills and vouchers showing the expenditure incurred in the treatment. In oral evidence the claimant examined himself as P.W.1, Dr. H.S. Kharayat, Orthopedic Surgeon, District Hospital, Pithoragarh, as P.W.2. On the other hand the owner of the offending vehicle examined himself as D.W.1 and filed certain papers in documentary evidence.

9- The learned Tribunal on issue No.1 came to the conclusion that the motor accident resulting into grievous injuries to the claimant was caused due to rash and negligent driving by the driver of the offending vehicle (bus No. U.P. 03-4273). The Tribunal on issue No.2 held that the offending vehicle was duly insured with the Insurance Company and the driver of the said vehicle was having valid and effective driving licence. The Tribunal also held on issue No.3 that the injured has not suffered any permanent disability as there is no evidence that his legs have either become shorten or amputated. The Tribunal thus awarded an amount of Rs. 1,15,000/- along with interest of 9% per annum as compensation, by way of the impugned judgment and award.

10- Feeling aggrieved by the aforesaid impugned judgment and award, the claimant has filed the appeal before this Court.

11- We have heard the learned counsel for the parties and perused the entire evidence on record.

12- The learned counsel for the appellant has contended that the finding of the learned Tribunal is erroneous and the compensation awarded is inadequate. It is also contended that the claimant suffered grievous injuries amounting to 100% disability leading him to become crippled for rest of his life and no compensation was granted to the claimant towards conveyance, expenses of attendants, food etc taking into account his injuries and treatment.

13- The main point for determination in this appeal is whether the injured/claimant has become permanently disability due to the accident injuries suffered by him and whether the amount of compensation is inadequate?.

14- At the outset , it may be mentioned that the Apex Court has laid down principles of assessment of quantum amount in injury cases in the case of **Ashwani kumar Mishra Vs. P. Muniam Babu and others** reported in **1999 A.C.J. Page 1105.** In the aforesaid case the Apex Court observed that *"Quantum-Injury-Principles of assessment-Injured was helping his father in business-Whether in absence of proof of income or employment the victim can claim regular monthly income for the purpose of assessment of compensation- Held: yes; some guesswork, some hypothetical consideration and some amount of sympathy linked with the nature of disability caused are required to be viewed with objective standards."* It was further observed that *"Quantum-Injury-Spine-Paraplegia- Injured suffered spinal cord injury, remained under treatment for 90 days, despite several operations of his spinal cord and kidney, became permanently disabled-Injured aged 23, earning Rs. 2000 p.m.-Tribunal awarded Rs. 1,64,037 which was enhanced in appeal to Rs. 2,25,000- Apex Court allowed Rs. 94,037 as medical expenses, Rs. 20,000 for special diet and cost of attendant in the hospital and Rs. 3,84,000 for loss of earning capacity, loss of expectation of life besides disappointment, frustration and mental stress as he has to keep a permanent attendant for the rest of his life- Award of Rs. 2,25,000 enhanced by the Apex Court to Rs. 5,00,000."*

15- In the instant case the claimant/appellant Indra Singh has filed this petition for compensation of Rs. 5,00,000/- and from perusal of the petition it is evident that the accident resulting into grievous injuries and permanent disability to the injured, took place on 30-7-2000 and since then the claimant is bed ridden. In support of his case the claimant/appellant examined himself as P.W.1 and in his testimony he substantiated his contention as pleaded in the claim petition. This witness has clearly deposed that due to accidental injuries he was taken to Bareilly by taxi and had undergone C.T. Scanning, X-ray etc. The claimant has also deposed that on account of the injuries sustained by him there is a complete loss of sensation and power in his legs. The claimant has also stated that keeping in view his grievous condition he was referred to Dr. Kaushik, who operated him and inserted rod in his leg. He has also stated that subsequently his both the legs were plastered. The claimant has deposed in his statement that he has already incurred about three lacs rupees in his treatment and on account of the aforesaid accident he had to take the loan of rupees two lacs from certain persons in the village.

16- Keeping in view the aforesaid statement of the claimant/injured we may mention that the claimant was brought to Bareilly by taxi and again he was taken to his home by the taxi and this fact is not challenged in the cross-examination. Hence considering the nature of injuries and the treatment as well as the period of hospitalization etc it is established on record that the injured must have incurred taxi charges for two times for both ways journeys between Pithoragarh and Bareilly. Therefore he would have incurred expenses to the extent of Rs. 10,000/- to which the claimant/appellant is entitled.

17- The claimant had been hospitalized in different hospitals and this part of the statement is also not challenged. Therefore the claimant would have naturally engaged an attendant during the course of his treatment and therefore he must have incurred at least Rs. 2000/- for this.

18- Since the claimant was hospitalized for long time in the different hospitals, hence he would have incurred expenses on

special diet. Considering the nature of injuries, period of hospitalization etc. it would be just and proper to award a sum of Rs. 3,000/- to the injured towards special diet.

19- From the perusal of the entire material on record it can be seen that on account of accidental injuries, the claimant has become permanently disabled to the extent of 100% as is evident from the statement of Dr. H.S. Kharayat. This doctor has stated that the claimant was produced before the Medical Board Pithoragarh and after considering the entire documents the Medical Board found him 100% disable. The disability certificate is available on the record as paper No. 27-C and this doctor has proved that document. This witness has stated that the claimant is completely disabled and it is not possible for him to move without any attendance or help. This witness in his cross-examination has stated that the disability of the claimant which has been shown in the certificate, is not temporary. He has stated that the disability to the extent of 100% would be life long. The genuineness of the disability certificate is not disputed by the respondents. Therefore keeping in view the nature of injuries and his job (as the claimant had been working as Raj Mistri) we are of the view that the injured/claimant has suffered 100% permanent disability as there is a complete loss of sensation and power in his legs and on account of this disability his life has been shattered.

20- The claimant/appellant has not produced any document with regard to his actual income but in any way in case of absence of any positive evidence with regard to the income of the injured, the principle of notional income is to be taken into account and in case if this principle is adopted then the notional income comes to Rs. 15,000/- per annum. As the injured is alive and has become crippled of his rest of the life, therefore, the deduction of 1/3rd from the aforesaid amount will not be justified and proper in this case as on account of injuries sustained by the claimant there is a loss of expectation in his life. The claimant was 29 years of age at the time of accident hence keeping in view the age of the claimant, the multiplier of 18 would be just and adequate and after

adopting this multiplier the total amount of compensation comes to Rs. 15,000/- X 18 = Rs. 2,70,000/-

21- Apart of the aforesaid amount the claimant has filed certain documents showing that there was an expenditure of a sum of Rs. 73,000/- in his medical treatment including the purchase of medicines and other expenses. Therefore, the claimant is also entitled for this aforesaid amount.

22- On the basis of the aforesaid calculation, the total amount of compensation comes to Rs. 2,70,000/- + 73,000/- + 10,000/- + 3,000/- +2000/- = Rs. 3,58,000/-. Accordingly the impugned award dated 20-9-2003 is liable to be modified to the above extent.

23- The Tribunal has already awarded the interest of 9% per annum which is not to be disturbed.

24- The appeal therefore is liable to be allowed partly.

25- According the appeal is allowed partly. The impugned judgment and award dated 20-9-2003 passed by M.A.C.T./District Judge, Pithoragarh in MACP No. 126/2001 is modified to the extent that the claimant/appellant is entitled to get Rs. 3,58,000/- as compensation instead of Rs. 1,15,000/- awarded by the Tribunal. The claimant/appellant shall also get an interest @ 9% per annum on the aforesaid amount from the date of filing the claim petition till the date of payment by the Insurance Company, respondent No.2.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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